IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 13168 of 1996

Between:

Venkataramanaiah S/o. Balakistaiah
Pentlavelly, Kollapur Mandal Mahabubnagar Dist.

..... PETITIONER

AND

1 The Dist Educational Officer
Mahaboobnagar District.
2 The Correspondent, Pragathi Vidyanikethan,

Pentlavelly, Kollapur Mandal, Mahabubnagar.
3 T.Venkataiah, Pragathi Vidya Nikethan, Pentlavelly,

Kollapur Mandal, Mahaboobnagar District.
4 The Government of A.P. Rep., by its Principal Secretary
Education Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the proceedings of the 1st respondent proceedings bearing No.Rc.No.C1/1843/92-2 Dt: 12-3-1996 and quash the same as illegal and un constitutional by issuing a writ of certiorari or any other writ order or direction of this Hon'ble court may deem fit and proper.

Counsel for the Petitioner: MR.V.V.NARASIMHA RAO

Counsel for the Respondents 1 and 4: GP FOR SCHOOL EDUCATION

The Court made the following:

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ORDER:

The petitioner assails the proceedings of the District Educational Officer, Mahabubnagar, dated 12.03.1996, according approval for absorption of the third respondent as Secondary Grade teacher in Pragathi Vidhyanikethan (the 2nd respondent school).

The petitioner joined service as a teacher in an un-aided post in the second respondent-school with effect from 05.08.1989. At the time of entry into service he was not qualified for employment as a teacher as he did not possess even a Teachers Training Certificate. He acquired B.Ed., qualification in August, 1990. The third respondent was also working as a Secondary grade teacher in the second respondent-school with effect from 30.06.1990. He was fully qualified to hold the post of a teacher as on 30.06.1990, the day, on which he entered service in the second respondent-school. Five vacancies in aided posts arose in the school and the school submitted proposals for absorption of the five existing teachers into the five vacancies. In the proposals, the name of the third respondent was also proposed for one of the aided vacancies.

The first respondent rejected grant of approval to the proposals of the management insofar as the third respondent is concerned, on the ground that the petitioner was factually senior to the third respondent in the unaided service of the school. Aggrieved thereby, the third respondent filed a writ petition. The writ petition was dismissed. Aggrieved thereby, the third respondent filed an appeal. The appeal was allowed as was the writ petition recording a finding that the determination by the officials of the school education department that the petitioner herein was senior to the third respondent was without notice or opportunity to the third respondent. Setting aside the earlier determination of the officials, the Division Bench of this Court directed that matter be considered afresh in accordance with law. Consequently, the order impugned herein dated 12.03.1996 came to be passed according approval for the appointment of the third respondent into the aided post, recanting from the earlier stand that the petitioner being senior to the third respondent was preferentially entitled for such absorption.

Demonstrably, the initial appointment of the petitioner as an unaided teacher in the second respondent-school with effect from 05.08.1989 was clearly illegal as he was not qualified to hold the post of a teacher. The third respondent's appointment to an unaided post with effect from 30.06.1990 was wholly competent and legal as he was qualified to hold the post. The petitioner's acquiring the qualification of B.Ed., sometime in August, 1990 would not enable him to be considered as senior to the third respondent solely on the unauthorized factum of his initial appointment as an unaided teacher with effect from 05.08.1989. The petitioner must yield place to the third respondent in the matter of seniority even in the unaided service. It is not disputed that the petitioner and the third respondent are both qualified now for regular appointment as a teacher to an aided post in the second respondent-school. An aided vacancy arose in the year 1992. As the third respondent was senior to the petitioner he was entitled to a preferential consideration for appointment to the aided vacancy. This is what the impugned order

has done namely appointing the third respondent to the aided vacancy in preference to the petitioner.

On the above analysis, the impugned order of the first respondent dated 12.03.1996 suffers from no infirmity warranting interference. The petitioner is not entitled to any of the reliefs claimed herein.

However, it requires to be noticed that the writ petitioner has also been in service in the second respondent-school since 05.08.1989 and has also acquired the qualification for holding the post in August, 1990. In view of his regular and continuous service atleast from August, 1990 he should be considered for any subsequently available aided post along with any others who might be equally entitled for such consideration.

With the above observation and in view of the fact that no other relief *in speice* as sought can be granted to the petitioner, the writ petition is disposed of confirming the validity of the first respondent proceedings, dated 12.03.1996. No costs.

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(GODA RAGHURAM, J)

09.08.2004

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To

1 The District Educational Officer,
Mahaboobnagar District, Mahaboobnagar.
2 The Correspondent, Pragathi Vidyanikethan,

Pentlavelly, Kollapur Mandal, Mahaboobnagar.
3 The Principal Secretary, Education Department,

Government of Andhra Pradesh, Hyderabad.

5 Two CCs to Government Pleader for School

Education, High Court Buildings, Hyderabad. (OUT)

6 Two CD copies.